WISCONSIN STATE SENATE

P.O. Box 7882 • Madison, WI 53707-7882

January 12, 2000

Senator Judith Robson, Co-Chair
Joint Committee for Review of Administrative Rules
Room 15-South, State Capitol

talk to me

Representative Glenn Grothman, Co-Chair
Joint Committee for Review of Administrative Rules
Room 15-North, State Capitol

Dear Senator Robson and Representative Grothman,

We write to request that you schedule a public hearing to invite testimony regarding Administrative Rule TRANS 233, which specifies the Wisconsin Department of Transportation's (WisDOT) minimum standards for the division of certain lands abutting state highways.

We have received contacts from a broad range of constituents expressing strong concerns regarding the authority WisDOT has taken through its interpretation, and what some consider abuse, of TRANS 233. The nature of the concerns we have heard involve the apparent practice of WisDOT, acting under the auspices of TRANS 233 to take, or threaten to take, real property rights or otherwise devalue real property without due process or compensation, in violation of the Wisconsin Constitution and the U.S. Constitution.

We are aware that the stated purpose of last year's changes as found in TRANS 233.01 are to "provide for the safety of entrance upon and departure from those highways and for the preservation of public interest and investment in those highways." However, we share concerns regarding specifics of WisDOT's ways to these ends.

As a result, we request that a hearing be held so that the practices of WisDOT can be examined for a review by legislative committee to determine if WisDOT has violated the intent of the Legislature in its implementation of this rule, and to consider if any revision is warranted. Please inform us as to when a hearing will be scheduled. Please contact our offices with any questions regarding this request. Thank you for your consideration of this request.

With kindest regards,

Dale W. Schultz
17th Senate District

Robert Welch
14th Senate District

Krause, Sheri

From: Dominic J. Melfi [dmelfi@promot.com]
Sent: Monday, January 31, 2000 2:00 PM
To: 'Rep.Brandemuehl'
Subject: RE: Land Owner

Dear Sir

I thank you for your gracious response to me.
I am forwarding the message below for your information.

Regards
Dominic
==========

Ginny

The DOT told Senator Plache that they would be willing to meet with her, but they didn't need to meet with me because they goofed and didn't reply to our request within 20 days so we should just file platt, they felt they lost their ligitimate hold over our property.

They found a loophole for me. Sweetness?

So I guess we won.

BUT, that is ok, I mounted a large campaign, based on my experience in this state... What about an average citizen who dosn't know how to go to war? The issues here are much deeper than just Dominic's land division.

I told Ms. Mulligan in Senator Plache's office, and I am telling you, that anything I can do to assist in some permanent improvement is forthcoming.

Thank you... YOU ARE GREAT.

Dominic
==========

-----Original Message-----
From: Rep.Brandemuehl [SMTP:Rep.Brandemuehl@legis.state.wi.us]
Sent: Wednesday, January 26, 2000 2:41 PM
To: Dominic J. Melfi
Subject: RE: Land Owner

Dear Mr. Melfi,

Thank you for contacting me regarding the problems you are having with your driveways and the Department of Transportation. Based on the information you provided, I would urge you to apply for a variance under Trans 233 in order to keep both driveways. Although Trans 233 does apply to situations

such as yours, it is my understanding from the Department of Transportation that you would be an excellent candidate for a variance and I strongly recommend that you contact the District 2 office in Waukesha for more information.

As chair of the Assembly Transportation Committee, I have set up a subcommittee to review Trans 233 because a number of concerns have arisen since the rule's implementation. However, it is difficult to say at this time whether any changes will be recommended.

If you have any difficulty receiving a variance, please let me know.

Sincerely,
Rep. David Brandemuehl
State Representative
49th Assembly District

-----Original Message-----
From: Dominic J. Melfi [mailto:dmelfi@promot.com]
Sent: Friday, January 14, 2000 5:06 PM
To: Rep.Brandemuehl@legis.state.wi.us
<mailto:Rep.Brandemuehl@legis.state.wi.us>
Subject: Land Owner

Dear Sir

I own aprx 4 acres at 231 Sheridan Road, with 410 feet of frontage on Lake Mich, and 539 feet of frontage on State RT32. I bought the property from the original family who had built the home in 1895. We have spent a small fortune on the old home, including a new garage and kitchen etc. In 1999 we applied to devide our proerty into 3 lots. We proposed that one drivveway serve our existing home and two lots share a second driveway. BOTH DRIVEWAYS are existing for probably 100 years. No new access is proposed. And no change in zoning is requested (R3). This community exists of mostly 100 foot lots, with driveways every 100 or so feet. Our proposal exceeds the average frontage in the community.

The DOT has stopped approval of the proposal, demanding that we abandon the driveway into our garage, and support a 300 foot access internally on our property. When RT32 was built, they truncated the front of our property to 39 feet from the porch, so diregarding the expense of maintaining a 300 foot driveway, and the additional risk my household would incurr of being stranded during snow storms etc... Imposing a 300' driveway between the front of my house and RT32 would be detrimental to the esthetics and value of my home. But, in fact it would also be impossible without variances anayway.

I am struggling to understand by what authority the DOT can force me to abandon 100 year old driveways. Even the statutes they quote for authority

such as CH. 236 (subdivision=5 or more parcels) does not apply to a land division of 3 parcels. Statute 84 speaks of protecting enminent domain and not being able to force abandonment of existing highway access.

I am talking to Ginny Gunderson at the office of the Governor, apparently there will be Legislative review of the DOT interpretation of their authority. However, I have asked her to have the DOT specify exactly which statute they are enforcing when they are asking me to abandon a 100 year old driveway.

This is totally frustrating, even the subdivision statute that dosn't apply to 3 parcels cautions that reasonable consideration be taken in regards to the character of the community and the value of existing buildings. When an agency reads only the part of the statutes granting them power, and ignore the restrictive cautions provided by the Wi legislature they become Anarchists. At least in this instance I believe they are intervening in a situation where they have no jurisdiction.

Regards
Dominic J. Melfi

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: January 21, 2000

TO: REPRESENTATIVE DAVID BRANDEMUEHL, CHAIRPERSON, ASSEMBLY COMMITTEE ON TRANSPORTATION

FROM: William Ford, Senior Staff Attorney

SUBJECT: Issues Raised With Respect to Chapter Trans 233

This memorandum describes some issues that have been raised with respect to ch. Trans 233, Wis. Adm. Code, regulating divisions of land abutting a state trunk highway or a connecting highway. The memorandum discusses issues that were raised in a memorandum to you from the Coalition to Reform Ch. Trans 233 ("the Coalition") that was distributed at the January 13, 2000 meeting of the Assembly Transportation Committee concerning ch. Trans 233 and issues that were raised at that committee meeting.

1. Narrow the Definition of Structures and Improvements in ch. Trans 233

The Coalition proposes to narrow the list of structures and improvements that are prohibited within setback areas.

Section Trans 233.08 generally provides that no person may "erect, install or maintain any structure or improvement within a setback area." A "setback area" is defined to mean an area within 110 feet of the center line of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the center line. (The setback area may be eight or 10 feet less if certain local ordinances are applicable.)

Section Trans 233.11 (2) authorizes the Department of Transportation (DOT) to permit ***variances*** from the setback requirements and from other provisions of ch. Trans 233 under certain circumstances. Under this provision, in general, variances may be permitted where the literal application of ch. Trans 233 would result in "practical difficulty or unnecessary hardship" or would "defeat an orderly overall development plan of a local unit of government." With respect to variances from setback areas, s. Trans 233.11 (2) provides that DOT may not grant a variance authorizing a structure or improvement within a setback area unless the owner executes

an agreement providing that, should the DOT need to acquire lands within the setback area, the DOT is not required to pay compensation, relocation costs or damages relating to a structure or improvement authorized by the variance. In granting variances, the DOT is also authorized to require such conditions and safeguards as it may deem necessary.

As noted above, s. Trans 233.08 prohibits any "improvement" or "structure" within a setback area. "Improvement" is defined broadly to mean any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" is specifically defined to include parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. However, "improvement" does not include sidewalks, terraces, patios, landscaping and open fences. [s. Trans 233.015 (2).]

"Structure" is defined to include a temporary or nonpermanent addition to or betterment of real property that is portable in nature but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the DOT. "Structure" is defined not to include portable swing sets, movable lawn sheds without pads or footings and aboveground swimming pools without decks.

The Coalition proposes that air pumps, catch ponds, drainage facilities, driveways, parking lots, pay phones, septic systems, signs, storm water systems, retaining walls and vacuum stations be allowed within the setback area.

2. Suggestions for Revision to the Process for Approving Land Divisions

The Coalition suggests revisions in the process by which land divisions are approved by the DOT. The Coalition states that a person seeking approval of a land division is asked to undergo lengthy meetings with ***district*** DOT offices but the plans for the land division developed during these meetings may not be approved by the ***central*** DOT offices when actual approval for the land division is applied for.

Note that ch. Trans 233 does not appear to require that persons seeking DOT approval of a land division meet with DOT district personnel. While s. Trans 233.03 (1) does require that a land divider, in a process referred to as "conceptual review," submit a rough sketch of the proposed land division to DOT district offices for review, s. Trans 233.03 (1) (b) states that: "There is no penalty for failing to obtain conceptual review. The conceptual review procedure is encouraged to avoid waste that results from subsequent required changes."

The Coalition asks for the following changes:

a. Require that if a person seeking approval of a land division meets with the DOT district office and submits a preliminary plat to the central DOT offices that adequately addresses the concerns raised by the district office, the DOT central office must approve the land division.

b. Authorize a person who seeks DOT approval of a land division to apply directly to the DOT central office without being first required to meet with the DOT district office.

c. Require that if the DOT does not complete the review of a proposed land division within 20 days of submission, the proposed land division is automatically approved by the DOT.

3. Explicit Approval of Plats Approved Prior to the Effective Date of ch. Trans 233 and of Improvements and Structures Placed Prior to the Effective Date of ch. Trans 233

Chapter Trans 233 took effect on February 1, 1999. The Coalition proposes that DOT give explicit approval to land divisions that were approved by DOT prior to February 1, 1999. In addition, the Coalition proposes that DOT give explicit approval to structures and improvements placed in a setback area prior to February 1, 1999.

4. Exclude Condominium Developments From ch. Trans 233

The Coalition states that ch. Trans 233 should not apply to land divisions that are condominiums because condominiums are merely a form of legal ownership, not a form of land division.

5. DOT "Guidelines" for Administering ch. Trans 233

At the January 13, 2000 meeting on ch. Trans 233, the DOT suggested it uses many guidelines for interpreting ch. Trans 233 that are not included in ch. Trans 233. DOT personnel suggested that these guidelines will be printed in the future. Among the guidelines discussed was the procedure DOT uses to determine whether a structure or improvement that was placed within a setback area prior to the effective date of ch. Trans 233 is still legal if the structure or improvement is destroyed and must be rebuilt. Several legislators suggested that when these guidelines are printed, they will come within the definition of "administrative rule in s. 227.01 (13), Stats., and that the DOT should promulgate them as administrative rules."

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

WF:ksm:wu;ksm

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WF:ksm:wu;ksm

Trans. 233

IMPLEMENTING PROCEDURES

WISCONSIN DEPARTMENT OF TRANSPORTATION

**JANUARY, 2000 * d r a f t *

CONTENTS

SUBJECT 1
GENERAL

STATUTES

The portions of the statutes that are printed in this document are the Unofficial Text as of October 1999.

IMPORTANCE

Protecting the investment in the highways of Wisconsin requires a pro-active approach to prevent future problems and complications from happening. Orderly and planned development is one of the goals of Trans. 233 and the land division reviews that are required by Trans. 233 are a fundamental part of planning for the future and maintaining the safety and efficiency of our transportation system.

STATEWIDE ACCESS MANAGEMENT PLAN

Wisconsin has an Access Management System Plan which specifies a network of state highways on which access will be controlled through the purchase of access rights or the designation of "controlled access highways". Some of these routes are freeways, others are two-lane or multilane roadways where access is currently being controlled, and others are roadways where the department plans to obtain access controls during the next two decades.

The Plan was developed to focus access management efforts where they would be most beneficial, encourage consistency in access management administration across the state, and coordinate controls at district boundaries. It addresses primarily rural access control needs, specifying where access should be controlled, but not how this should be done.

The Plan is composed of two tiers. Tier I consists of the routes which make up Wisconsin's Corridors 2020 system - a statewide system of key highway corridors interconnecting population centers and economic regions. In rural areas, this network is almost identical to the state's National Highway System. Access management on these corridors is essential to maintaining the required high level of service. Because these highways are generally the main routes between communities and have higher traffic volumes than other state highways, they tend to experience the greatest development pressures.

Tier II is comprised of other state highways which meet specified criteria. These routes and highway segments are roadways where limiting access will be a cost-effective strategy to improve safety, reduce congestion, facilitate planned access to developing land, and delay or avoid future construction expenditures.

TYPES OF ACCESS CONTROLS

The following is a brief overview of the methods of access management and control which are available to be used (see FDM 7-10-1 for more details).

- **Administrative Access Control**

Access control under state statute 84.25 authorizes the WisDOT Secretary to designate as controlled-access highways, rural portions of the state trunk highway system on which the existing or projected ADT exceeds 2000 vehicles within the next 20 years. When this is done, access is "frozen" and future alterations to access require department approval.

- **Purchased Access Control**

Wisconsin law provides that any lands or interest in lands needed for highway purposes be acquired by the department in the manner provided in state statute 84.09. While access rights alone may be acquired, such rights are normally acquired in conjunction with the purchase of right-of-way for a highway construction project. Section 84.09 allows the department, through negotiations, to alter and eliminate unnecessary or unsafe access points, as well as to restrict or prohibit additional access. This is done where there is redundant or unneeded access which can be eliminated as part of the access control project development.

- **Driveway Permitting**

State statutes prohibit making any excavation or fill or any other alteration within the highway right-of-way without obtaining a permit from the highway authority maintaining the highway. Driveway permits are issued under authority of statute 86.07(2) and Wisconsin Administrative Code chapter TRANS 231.

- **Access Covenants**

An access covenant is used to control access in a location which does not have administrative or purchased controls. It is a legal agreement between a property owner and WisDOT that limits the number of access points a property may have on the state trunk highway system. Consideration is given to whether the road is on the Access Management System Plan, functional classification of the roadway, traffic volume, and development potential of surrounding lands. If an access covenant is warranted, WisDOT negotiates with the property owner to develop a mutually agreeable one.

- **Other Tools for Corridor Access Management**

Land Use Access Management Plans

These plans are developed jointly by local units of government and WisDOT. Local units of government facing rapid development of an area served by one or more state trunk highways have traditionally initiated the plans, but they can also be initiated by the state. Plans show existing and future access points to state trunk highways, median cross-overs and desired land use patterns for land adjacent to the highway. If a formal intergovernmental agreement is signed, no changes in access or median crossovers can occur without the agreement of all parties.

Transportation Impact Analyses (TIAs)

A TIA is an engineering study that compares before and after traffic conditions on a road network due to a proposed land use change. For WisDOT's purposes, it is produced to identify, for both WisDOT and the developer, the optimum number and location of highway access points and any roadway changes needed to accommodate the traffic generated by the development.

Official Mapping

When planning for transportation facilities, counties, cities and villages, and towns that have adopted village powers, have the authority to prepare plans and maps showing the approximate

location and width of future highways and streets. The purpose of the map is to inform the public of land areas that may be required for future rights-of-way.

Joint Access Easement Agreements

Joint access easement agreements should be considered tools for corridor management and land use/access management plans. They can reduce traffic congestion on through-streets allowing access to several destinations from a single access point. They can also provide several access points to many destinations and function as a quasi-private road.

Zoning/Land Use Planning Input

WisDOT can be pro-active in working with local governments to coordinate local land use and state highway access management goals. By offering to assist local governments in developing zoning ordinances, comprehensive plans, and/or land use plans, WisDOT can offer a perspective not usually available in the local planning process. The department can offer this type of assistance when a more formal land use/access management plan is either not appropriate or not feasible.

- **Freeway or Expressway Designation**

Section 84.295 of the Wisconsin Statutes provides that where WisDOT finds the volume and character of traffic sufficient to warrant the construction or acquisition of right-of-way for the ultimate construction of a highway to accommodate four or more lanes of traffic, it may, by order, designate that facility as a freeway or expressway. This authority is similar to the official mapping powers of local governments. Where the designated facility will be on new location, there is no inherent right of access to abutting property owners. If the designated facility is an existing roadway, access may be via frontage roads.

- **Scenic Easements**

Scenic easements are purchased under statute 84.09(1) which authorizes the purchase of interests in land and 84.105(6) which authorizes the purchase of easements for national parkways such as the Great River Road. They are commonly used to insure the preservation of natural beauty and features that enhance and contribute to the general appearance of the highway and to the interest and enjoyment of highway users.

- **Design/Engineering Techniques**

WisDOT may eliminate intersections between controlled-access highways and existing streets or highways that are at grade, or by closing off such roads and streets at the right-of-way boundary line of such controlled-access highway. The intersection may be modified by grade separations or provision of a service road. WisDOT may divide and separate any controlled-access highway into separate roadways or lanes by raised curbing, dividing sections or other physical separations or by signs, markers, pavement markings or other suitable devices, and may execute any construction necessary in the development of a controlled-access highway including service roads or separation of grade structures.

- **Trans. 233 Review**

Under Chapter 236 of the Wisconsin Statutes, WisDOT and other state agencies are objecting authorities for review of land divisions. TRANS 233 prescribes certain requirements intended to minimize or eliminate the impacts of land divisions on abutting state highways.

TRANS. 233 AFFECT ON Sec. 84.09 PROJECTS - Purchased Access Control

{to be written}

TRANS. 233 AFFECT ON Sec. 84.25 PROJECTS - Administrative Access Control

Trans. 233 does not eliminate the need to use 84.25 controls on particular segments of highways. Trans. 233 is reactive and only applies to spot locations, whereas 84.25 is proactive and is used on large segments of highways.

Existing 84.25 projects may have to be updated if access is modified under a Trans. 233 review, or if an existing access point is revoked.

DELEGATION

In the future, variance approval for certain circumstances is expected to be granted to the department's district offices. An example would be existing driveways allowed to be retained on certain classes of highways. The delegation will include a definition of conditions for granting variances (such as no direct access available to another public road, no accident history, no change of use, etc.).

This delegation to the districts will take effect when all districts are consistent in the application of and knowledgeable about policy.

Also in the future, the review authority for connecting highways may be delegated to the local unit of government responsible for the connecting highway. The BHD will develop standard agreement language for delegating the authority. This delegation of review authority may be revoked if the local unit of government is not following the intent of the rule.

PROCESSING

CSM's and other types of submittals may be submitted directly to the district. Standard subdivision plats, county plats and condo plats should be submitted to Central Office. If the district gets one of the above 3 types of plats submitted to them directly, please forward them to Central Office. Send the checks to Central Office along with copies of the plats and submittal sheet, but keep the drainage computations, and miscellaneous exhibits.

FILE RETENTION

Submittal files must be kept indefinitely. The land division map or document must be kept permanently, along with any approved variances. Correspondence may be discarded after 7 years, unless it has a bearing on future agreements or commitments.

Ideally, records should be kept in a readily accessible electronic format. Scanned images and computerized data are the most efficient storage system to retrieve information for use in the future. At this time there is no statewide data collection/storage system. Each district must do what best suits their needs. A statewide system may be in the future, but there is not one now.

Once a land division has been approved through the Trans. 233 review process that approval stands for the life of the land division. Further division would require another Trans. 233 review. This is the same as the rules for Chapter 236.

Subdivision plats, access control plats (84.25), 84.09 purchases, land divisions that have gone through the 233 review process and have access restrictions placed on them, access covenants, and driveway (access) permits are all documents that deal with highway access and need to be available for review by various sections within the district and Central Office. Some type of automated record retrieval system is needed to provide equal access to all people involved in access issues.

TIME CHARGING/PROJECT ID/ACTIVITY CODE

Time spent on Trans. 233 reviews should be charged to Project I.D. **0091-Y4-1D**, where Y is the last digit of the Federal Fiscal Year, (currently "0" because the Federal Year starts in October) and D is the District number.

Use **207** for the activity code for all land division review tasks.

SALE OF EXCESS LANDS

The department should be placing access and setback restrictions (and the noise note where applicable) on lands we sell prior to the sale. If need be, request and grant a variance to allow any exceptions to the rule, such as access to the highway. See the discussion under Applicability 233.012.

{This information also needs to be in the WisDOT Real Estate Manual.}

ENFORCEMENT

When it is discovered that a surveyor has apparently disregarded the requirements of Trans. 233 and has recorded a document that is not in compliance with Trans. 233, the Department shall take action to correct the situation, and to prevent the situation from occurring again.

The first step shall be to notify the surveyor and land owner that the land division is not in compliance with Trans. 233, and request that the appropriate actions be taken to rectify the situation. (This may be an Affidavit of Correction, an amended plat, or other corrective action.) If the surveyor is not cooperative, the department will progressively take the following actions until the land division is altered to be in compliance:

Notify the County Surveyor
Write a letter of Complaint to the Wisconsin Society of Land Surveyors
File a complaint with the Department of Regulation and Licensing
Notify the District Attorney and request prosecution.

SUBJECT 2
PURPOSE (233.01)

The purpose of Trans. 233 is based on Chapter 236 of the State Statutes. Both "Purpose" sections are reprinted below, with added emphasis on the applicable wording.

> *236.01 Purpose of chapter. The purpose of this chapter is to regulate the subdivision of land to* ***promote public health, safety and general welfare****; to further the orderly layout and use of land; to prevent the overcrowding of land;* ***to lessen congestion in the streets and highways****; to provide for adequate light and air; to facilitate adequate provision for water, sewerage and other public requirements;* ***to provide for proper ingress and egress****; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes.*

> ***Trans. 233.01 Purpose.*** *Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting high-way, in order to* ***provide for the safety of entrance upon and departure from those highways and for the preservation of public interest and investment in those highways****. The authority to impose minimum standards for subdivisions is s. 236.13(1) (e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. with the requirements of s. 236.34, Stats.*

APPLICABILITY (233.012)

> ***Trans. 233.012 Applicability.*** *In accordance with ss. 86.07(2), 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., or other means not provided by statute, and that abuts a state trunk highway, connecting highway or service road.*

This section is two sentences long, and those two sentences are to be considered as the whole description of items to which the rule applies. Granted, taken alone the first sentence could be taken as all land divisions, but the intent was to apply it only to those which abut a state trunk highway, connecting highways or service roads and when taken together with the second sentence it does.

Trans. 233 applies to all lands abutting a state trunk highway, connecting highway or service roads in all 72 counties, except in Milwaukee County, they apply to all other incorporated municipalities, except the City of Milwaukee, and to any unincorporated lands in Milwaukee County. (State Statutes Chapter 36, Platting Lands and Recording and Vacating Plats, Section 236.12, Procedure for approval of plats. (1) "*This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 500,000 or more.*") In the City of Milwaukee other restrictions apply now and have applied in the same way in the past.

Review of Trans. 233 Land Divisions in Milwaukee County

	City of Milwaukee	Other Cities	Unincorporated Areas
STH's			
-Subdivisions	NO (Statutorily Exempt)	YES	NO (Statutorily Exempt)
-Other Land Divisions	NO (by policy)*	YES	NO (by policy)*
Connecting Hwys.			
-Subdivisions	NO (Statutorily Exempt)	YES**	NO (Statutorily Exempt)
-Other Land Divisions	NO (by policy)	YES**	NO (by policy)

* Request that they be sent to WisDOT for conceptual review to preclude problems from arising when driveway permits are requested.

** May delegate authority to local unit of government by agreement.

BUSINESS ROUTES

Trans. 233 does not normally apply to a Business Route. However, it will apply in those few situations where the route is on the STH system (under WisDOT jurisdiction) or has been designated a connecting highway.

FUTURE STH ROUTES

Trans. 233 does apply to future STH corridors. It has long been a departmental policy to review subdivisions along future STH corridors. The Plat Review section of the Department of Administration has sent subdivision plats to the DOT as abutting plats which only touch future STH corridors and no other STH. When the department has a signed agreement with a county or local unit of government for the jurisdictional transfer of a highway the DOT has an interest in that future STH even though the transfer has not yet occurred. In those cases the county and the district should work together regarding the access to that highway. It also applies to officially mapped corridors and corridors for which an environmental document showing the corridor has been written

STH ROUTES BEING TRANSFERRED TO LOCAL JURISDICTION

This also works in reverse for highways reverting to local jurisdictions. We should consider the local government's wishes and potentially grant variances when the locals have no problem with a situation which we would normally not allow.

EXAMPLES OF "LAND DIVISIONS"

A land division occurs any time the number of parcels is different in the "after" condition than it was in the "before" condition. An assemblage is considered a land division for the purposes of this rule. Splitting a parcel into smaller parcels, or combining parcels into a larger parcel are both considered land divisions. Both have the potential to affect the volume of traffic entering and leaving the highway, and thus the safety of the through traffic on the highway.

If a parcel being described in a land division is the remnant from a previous land division, thus basically the original property minus the sold off portion, and the new document (deed, CSM, etc.) is being created to define this leftover property, this is usually considered a land division. Even though it could be argued that it was a land division from a previous time, prior to the revised rule, it is just now being defined and recorded, so it is a land division that must conform to the new rule.

Trans. 233 does apply to Indian Lands. The department needs to protect our investment in the highway, which is a public resource that benefits all people. The department also needs to maintain the safety of the highway. Lands adjacent to the highway must conform to the rules and regulations regardless of the ownership status of those lands. The department should process all land divisions the same way.

If a tribe objects to the Trans. 233 process, the district should arrange a meeting with the tribe, the district, and the FHWA. The safety of the traveling public, and the protection of the public investment in the highway are the primary concepts that apply.

LAND DIVISIONS RECORDED PRIORTO FEBRUARY 1, 1999

Revised Trans. 233 applies only to land divisions recorded after February 1, 1999. It does not apply to all land divisions adjacent to STH's that were in place prior to that date.

Projects that were in various stages of completion on February 1, 1999 are subject to the revised rule. Anything recorded after February 1, 1999 must undergo the DOT review even if it is part of a development that was under consideration prior to the revised rule. Subsequent development phases are not exempt. Later phases may be subject to more restrictions than phases recorded prior to February 1, 1999. That is not sufficient grounds for a variance. Those prior phases will not be subject to additional restrictions, unless it is re-divided.

The date of the recording of the document used for a land division is used to determine applicability. If the document was recorded prior to February 1, 1999, but the sale doesn't take place until some time after that, TRANS 233 would not apply. It is not the sale date, but the recording date that governs.

SALE OF EXCESS DOT PARCELS

DOT requires a person purchasing excess lands to have a Certified Survey Map done as part of the sale process. This CSM does not have to go through the full Trans.233 review process, however, the Trans. 233 restrictions (such as setback, vision corners, access controls, etc.) must be placed on the land prior to its sale. In effect, we are placing the restrictions on the property prior to creating the land division. Once the proper restrictions are placed on the deed and the CSM, the surveyor will be given a DOT Number to place on the CSM, but there will be no fee charged.

WAIVER OF APPLICABILITY

There are some situations where the Trans. 233 review can be waived. When this occurs, a letter should be sent to the property owner/surveyor and the County Register of Deeds, stating that the DOT Trans. 233 review has been waived, and indicating why the waiver has been made. Waivers are appropriate in the following situations:

- Development of a parcel if no land division takes place. It applies only to land divisions not development without a land division.
- The sale or exchange of lands of abutting owners where no new parcels are created (i.e., where the property line is shifted), unless such a transaction involves a change of access to a STH.
- CSM's in a subdivision that was reviewed under Trans. 233 and there are no changes of use or access, only a redefinition of lot boundaries.
- If there is only an easement that abuts the highway, and the actual land division is removed from the highway with the property owners having no interest in the underlying property that is abutting other than the easement.

DEFINITIONS (233.015)

340.01(2)
*(2) **"Alley"** means every highway within the corporate limits of a city, village or town primarily intended to provide access to the rear of property fronting upon another highway and not for the use of through traffic.*

340.01(9)
*(9) **"Connecting highway"** means a highway designated as such under s. 86.32.*

86.32 Connecting highways.
(1) The department may designate, or rescind the designation of, certain marked routes of the state trunk highway system over the streets or highways in any municipality for which the municipality will be responsible for maintenance and traffic control and the maintenance and operation of any swing or lift bridge. Such maintenance, operation and traffic control of the connecting highways and swing and lift bridges shall be subject to review and approval by the department. Those marked routes of the state trunk highway system designated as connecting streets prior to July 1, 1977, shall become the connecting highways in municipalities which are eligible for aids payments under this section. The character of travel service provided by a route, uniformity of maintenance, the effect on the maintaining agency, and the municipality's maintenance capability will be considerations by the secretary, in cooperation with the municipalities and counties in making changes in the connecting highways of the state trunk highway system in municipalities. The decision of the secretary to designate or rescind a designation may be appealed to the division of hearings and appeals, which may affirm, reverse or modify the secretary's decision.

A "**connecting highway**" is not a state trunk highway. It is a marked route of the State Trunk Highway System over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the

through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. The Department reimburses municipalities for the maintenance of connecting highways in accordance with a lane mile formula. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways with geographic end points is also available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. As of January 1, 1997, there were 520 miles of connecting highways.

A "**business route**" is an alternate highway route marked to guide motorists to the central or business portion of a city, village or town. The word "BUSINESS" will appear at the top of the highway numbering maker. A business route branches off from the regular numbered route, passes through the business portion of a city and rejoins the regularly numbered route beyond that area. Business routes are not state trunk highways or connecting highways. The authorizing statute is s. 84.02(6), Stats. This rule does not apply to business routes, unless the business route is still a part of the State Trunk Highway (STH) System or if it is a Connecting Highway.

The following business routes are part of the STH system:

- Business 51 from the junction with USH 51 & STH 54 south of Plover to the junction with USH 51 north of Stevens Point.
- Business 51 from the junction of USH 51 South of Rothschild to the junction of USH 51 Northwest of Wausau.
- Business 151 from the junction of USH 151 south of Columbus to the junction of USH 151 north of Columbus.
- Business 41 in De Pere.

The following business routes are Connecting Highways:

- Business 51 in Schofield from the north end of the Eau Claire River Bridge to Moore St.
- Business 51 in Stevens Point from Northpoint Drive to 0.36 mile southeast of Nebel St.
- Business 51 in Wausau from Randolph St. to Moore St.

340.01(15)
*(15) **"Divided highway"** means a highway with 2 or more roadways separated by spaces not intended for the use of vehicular traffic.*

340.01(22)
*(22) **"Highway"** means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in s. 115.01 (1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46).*

340.01(46)

*(46) **"Private road or driveway"** is every way or place in private ownership and used for vehicular travel only by the owner and those having express or implied permission from the owner and every road or driveway upon the grounds of public institutions other than public schools, as defined in s. 115.01 (1), and institutions under the jurisdiction of the county board of supervisors.*

340.01(54)
*(54) **"Roadway"** means that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder. In a divided highway the term "roadway" refers to each roadway separately but not to all such roadways collectively.*

340.01(57m)
*(57m) **"Service road"** means every highway that runs generally parallel to but is separated from the main roadway by a physical barrier and primarily intended to provide access to the abutting property and not for use of through traffic.*

340.01(60)
*(60) **"State trunk highway"** means any highway designated pursuant to s. 84.02 or 84.29 as part of the state trunk highway system, exclusive of connecting highways.*

A **"state trunk highway"** is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways.

340.01(64)
*(64) **"Street"** means every highway within the corporate limits of a city or village except alleys.*

Special Crossing -

84.25(7)
*(7) **Special crossing** permits. Whenever property held under one ownership is severed by a controlled-access highway, the department may permit a crossing at a designated location, to be used solely for travel between the severed parcels, and such use shall cease if such parcels pass into separate ownership.*

Easement - A non-possessing interest held by one person in land of another person whereby the first person is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of the easement holder's rights. Easements fall into three broad classifications: surface easements, subsurface easements, and overhead easements. "Real Estate Appraisal Terminology" by Byrl N. Boyce 1975

Lease - A written document by which the rights of use and occupancy of land and/or structures are transferred by the owner to another person or entity for a specified period of time in return for a specified rental. "Real Estate Appraisal Terminology" by Byrl N. Boyce 1975

Commercial Driveway - A driveway to a commercial building or business.

Field Entrance - A driveway to a farm field. For agricultural vehicles only.

Access Point - A point that allows access to a highway. It may take the form of a driveway, street, road, alley, special crossing or highway.

OTHER ABUTTALS (233.017)

When a parcel is described to a section line and there is a small strip of land, often with no identifiable owner, between the highway right of way line and the section line, (generally because the original highway was thought to be on the section line) this is considered to be an abutting property, eventhough in actuality it does not abut. The original intention was for it to be an abutting property, but more accurate survey techniques have resulted in a gap.

{example sketches of abutting properties to be added}

SUBJECT 3
BASIC PRINCIPLES (233.02)

(1) Local traffic from a land division or development abutting a state trunk highway or connecting highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

This principle allows the department to require a Traffic Impact Analysis when there is a question about the safety of access to a development, and/or the impact of the development on the function or operation of the highway.

It allows the department to control access on side roads to provide for the safe operation of the intersection.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.

This principle requires the use of existing streets or highways, or the creation of an internal road system.

(3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:

(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.

(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.

{example sketches of contiguous properties to be added}

SUBJECT 4
PROCEDURES FOR REVIEW (233.03)

INCOMPLETE SUBMITTAL

If the submittal from the divider or surveyor is incomplete, meaning is it lacking in one of the required submittal items (map or document, drainage information, or fee), return the submittal, including the check, as soon as possible to the divider or surveyor. Also send the checklist and identify what is missing. Notify the submitter that the 20 days does not start until all of the required information is received.

MINOR OMISSIONS

If the submittal from the divider or surveyor has minor omissions, contact the surveyor and request a time extension while they make the needed changes and resubmit the revised map. Minor omissions do not alter the layout of the land division, they are just corrections that need to be made to fully comply with the specifics of Trans. 233. Examples of minor omissions include failure to show access restriction graphically; missing access restriction note, setback note, or noise note; incorrectly labeling the highway as STH rather than USH; or incorrectly labeling the setback line as "Building" rather than "Highway".

TIME CONSTRAINTS

The day the department receives the full submittal is the date that a land division is considered to have been submitted. The 20 days starts when the submittal arrives at either the District or the Central Office, whichever office receives it first.

The check must be processed within 7 days of receipt by the department.

Section 236.11 of Chapter 236 states what happens if the department fails to act within the 20 day time limit. If WisDOT does not act within the 20 days, or request and receive an extension, a submittal is considered to be certified.

Land divisions to which we don't reply to within the 20 days are deemed approved. If the DOT is at fault for not responding in the allotted time, it would be considered approved. Inability of the DOT to contact the surveyor to make necessary changes or to grant a time extension should result in an objection based on the deficiencies of the land division.

Each formal submittal needs a formal response, either an objection letter or a certification letter.

Preliminary submittals may be conditionally certified. Final submittals must be in full compliance with TRANS 233 prior to certification. No conditional certifications will be granted for final submittals.

See "Procedures for Creating an Original Certification/Objection/Conditional Letter", "Procedures for Completing a Certification Letter", "Procedures for Completing a Conditional Certification/Objection Letter" in Appendix G

PROCEDURES TO BE FOLLOWED FOR REVIEW OF EACH TYPE OF LAND DIVISION

Some history here is in order. Under the previous version of the rule, the first time WisDOT would generally see a subdivision would be when the developer was seeking final approval from the local approving authority. Some communities require that a preliminary plat be created and reviewed by the department while others do not have such a requirement. In fact, some communities required that the infrastructure of a land division be constructed completely to their standards before the community will approve the final plat. But in those cases where WisDOT did not see the division until the final was submitted, a large amount of engineering work had usually been completed. If the developer had come to WisDOT very early in the process many of the redesigns required by the rule could have been eliminated. The wording of the conceptual review language was an attempt to focus on the need to come to WisDOT early. By making it mandatory but without an assessed penalty for noncompliance the department was trying to make that point. We were attempting to save the developers unneeded expense and emphasize the need for early review by the department. A developer certainly may engage in both a conceptual review and submit a preliminary plan. The rule is simply stating that the land divider accomplish at least one of the two.

Conceptual Reviews (any kind of land division):
A conceptual review is encouraged for any kind of land division. This gives the divider an opportunity to understand the requirements of Trans. 233 which may affect what they plan to do with their property. There are no time limits on a conceptual review, but they should be processed as quickly as possible in order to encourage the use of this type of review. The goal should be to complete a conceptual review within 20 days.

At this stage, the divider will find out, at least in general terms, what access we are willing to consider for the land. This allows the divider to look at different options before too much time and money is spent developing plans for the area. Drainage retention requirements, setback areas, and access restrictions all impact the design for the land. Knowing these restrictions early in the process can result in a more efficient and economical design.

A conceptual review does not require a formal response. Our comments and concerns can be relayed to the divider by a phone call, face-to-face meeting, faxed notes, e-mail, or letter. Because the level of detail is probably not too good at this point, the conceptual comments may take the form of a checklist, noting the various items that the divider will have to consider.

Variances can be applied for and granted during the conceptual review stage.

Preliminary and Final Reviews - Subdivision Plats:

1. First DOA sends copies of the plats and the money to Central Office and copies of the plats to the districts. DOA sends out a weekly DOT Work List of subdivision plats. Each list is accompanied by a cover sheet which states that if you have not received a copy of the plat you should contact them and request one.
2. Central Office (CO) processes the money and then forwards their comments via e-mail to the district with a date for review comments to be sent back to CO by the districts. If the districts do not get a copy of the plat, they need to inform us immediately.
3. When CO gets the district's comments, they contact the surveyor and forward the district's comments and CO comments by either sending out a certification letter, an objection letter or a fax requesting a time extension and detailing the areas that need fixing if it is a final and no redesign is required.

Preliminary and Final Reviews - County Plats and Condo Plats:

1. First the submitter should send two copies of the plat to either the CO or the district with the money. Whoever receives the plats should process the check and send a copy of the plat and submittal sheet to the other office. It would be best if copies were sent by the submitter to both of us, but that may be asking too much, also that may complicate processing the check.
2. CO then forwards their comments to the district along with a copy of the plat and with a date for review comments to be sent to CO by the district.
3. When CO gets the districts comments they contact the surveyor and forward the district's comments and CO comments and either send out a certification letter, an objection letter or a fax requesting a time extension and detailing the areas that need fixing if it is a final and no redesign is required.

When a submitter is sending the money and the only copy to the district, the district should handle the money but still send CO a copy of the plat. If any drainage information is given to the districts they should keep it. If CO receives the drainage information, it will be forwarded on to the district.

The reason behind CO sending the letter on the county plats and the condominium plats is that they may have major impact on the highway and we would like to coordinate the review for consistency sake. Also, because county plats and condominium plats are similar to subdivision plats we would like to keep the process the same. CSM's and other land divisions have a smaller impact and it was felt that the districts could handle those quicker if the work was kept in the district.

DOT approval numbers should not be given out for preliminary reviews. Only a letter stating our non-objection should be issued in the preliminary review stage.

Preliminary and Final Reviews - CSM & Other land divisions

{to be written}

Preliminary and Final Reviews - Metes & Bounds, Plats of Survey, Warranty Deeds

{to be written}

TIME EXTENSION PROCEDURE

Any time that additional information is required, changes must be made, a variance must be obtained, a time extension is needed. The land divider can grant DOT a time extension by providing a letter or fax similar to the following:

> *"We hereby grant the Wisconsin Department of Transportation a 30-day time extension for review of the ____ Subdivision/land division so that we may make the necessary revisions requested by them." The FAX should contain the company name & letterhead along with a signature and date.*

When you realize that a time extension is needed, notify the land divider that they need to request one or we will have to object because the changes cannot be made or the variance cannot be obtained in time to meet the deadline. The best way to notify a divider of the need for a time extension is by phone followed by a letter or a fax similar to this:

> *I have a deadline of ____to either certify or object to this land division. At this time I cannot certify the land division. It is not possible to make the above changes and resubmit the land division (and/or) process the variance for __prior to the deadline, so WisDOT will need a time extension from you. You may grant a time extension by sending me a FAX similar to:*
>
> > *"We hereby grant the Wisconsin Department of Transportation a 30-day time extension for review of the ____ land division so that we may make the necessary revisions requested (and/or) by them." The FAX should contain the company name & letterhead along with a signature and date.*
>
> *If I do not receive a time extension by the deadline, I will have to object to the plat.*

SUBJECT 5
REQUIRED INFORMATION (233.04)

Required information which is for informational purposes (such as adjacent driveway locations, nearest highway locations, drainage information, etc.) may be provided on a separate document and does not have to be part of the recorded map or plat. This information does not need to be surveyed, the approximate locations are adequate. It can be scaled from aerial photos if they are available.

Although the rule requires all of the information, it may not always be practical to provide some information. For example, if a land division is not seeking access to the highway, we don't really need to know the driveway locations on the adjacent lands. Consider the reasons we are asking for the information, such as safety of the traveling public, when you request that they provide us with any missing information.

The right of way distances and bearings on the map must agree with the highway right of way plat information. If there is a discrepancy between the surveyors information and the highway plat, the surveyors information should be listed and then a notation similar to "recorded as ... on Highway Plat No. XXXX-XX-XX" added to identify what the highway plat information is.

> *(1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.*
> *(2) The locations of all existing and proposed highways with-in the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.*
> *(3) The location, and identification of each highway and private road or driveway, leading to or from the land division.*
> *(4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.*
> *(5) The locations of all easements for accessing real property within the land division.*
> *(6) The location of the highway nearest each side of the land division.*
> *(7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway that abuts the land division, if the connection is any of the following:*
> *(a) Within 300 feet of the land division, if any portion of the land division lies within a city or village.*
> *(b) Within 1,000 feet of the land division, if no part of the land division lies within a city or village.*
> *(8) All information required to be shown on a land division map shall be shown in its proper location*

SUBJECT 6
DIRECT ACCESS TO HIGHWAY (233.05)

Direct access to a state highway should be avoided. Use existing local roads, an internal street system and joint driveways rather than driveways to provide access to a state highway or connecting highway.

The WisDOT district office in conjunction with the approving authority and with input from the divider determines whether the traffic access pattern is desirable by basing these decisions on its expertise with highway operational efficiency and safety and by applying logic and common sense.

A Traffic Impact Analysis (TIA) can be required for developments that will have a significant amount of traffic. The purpose of the analysis is to determine whether modifications to the existing street system are needed to accommodate the increased traffic generated by the development. The developer or local government may be required to pay the costs of these modifications. If it is uncertain whether the development will have an impact, a TIA is recommended.

A variance is required whenever direct private access is granted to a STH, including CSM's. Driveways that existed prior to the land division are not "grandfathered in". We need to consider the safety of the locations and try to minimize the total number of driveways. The department can revise previous controls by revoking existing permits or authorizations if safety or increased traffic volume requires it. For example, a horseshoe driveway can be reduced to one access point, or if a public road is created, several existing driveways can be eliminated by requiring access to the public road rather than the highway. If it is determined that the driveway is acceptable, it must receive a variance in order to continue to function as a driveway.

It is necessary to obtain a variance to allow a private access if that access is currently permitted by either an 84.25 plat or 84.09 plat and deed. When the district receives a Trans. 233 request they should determine whether we have established access controls by one of these means and whether the access at the requested location is currently allowed by those controls. These accesses should be reviewed to determine whether it is still desirable to allow the access to continue. In some cases we may wish to remove the access point because the original reasoning for it is no longer valid, or conditions have changed so that it is no longer a safe location. It is for these reasons that we must review access points that have already been granted by other means. So, a variance is still required if the access is to remain. If the conditions have not changed, chances are the variance will be readily approved.

WisDOT required restrictions on a land division may be modified through an affidavit of correction upon concurrence of the department, the current owner and the approving authority following a public hearing on the matter. It has been the experience of the department that many times when restrictions are placed on the first deed following a division, subsequent deeds may not show the restriction. By placing the restriction on the land division document, it becomes

part of the legal description of that division and any title search should recognize the restriction. The department does not review deeds unless that is the method used to create the land division. Thus the department would have no assurance that the restriction would be placed upon the deed. If the deed contained the restrictions as well as the dividing document the department would have not objection, but we do not want to review every deed.

If there will be no access to the State Trunk Highway, this must be shown graphically.

{examples of different methods to show "no access" to be added}

SUBJECT 7
FREQUENCY OF CONNECTIONS WITH A HIGHWAY (233.06)

Trans. 233.06 Frequency of connections with a state trunk highway or connecting highway.
(1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.
(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

The 1,000 foot spacing mentioned in the rule is for rural areas. A lesser spacing may be appropriate in urbanized areas.

Additional guidance is available in Procedure 11-5-5 of the Facilities Development Manual. The department is in the process of adding to this guidance. Future revisions of this procedure are expected.

The department requires a minimum of 8 seconds of sight distance for access points to highways. At 55 MPH a vehicle will travel 558 feet in 8 seconds.

Several factors should be considered when determining connection spacing. Speed limit, traffic volumes, functional classification, urban or rural, and the Access Management Plan (AMP) status.

Street Connections	Desirable @ 55 MPH	Minimum @ 55 MPH
Tier 1 of the AMP	1 mile	½ mile
Tier 2 of the AMP	½ mile	¼ mile
All other routes	¼ mile	1000 feet

Driveways	Desirable @ 55 MPH	Minimum @ 55 MPH
Tier 1 of the AMP	Freeways - no driveways Expressways -1000 feet	Freeways - no driveways Expressways -750 feet
Tier 2 of the AMP	750 feet	500 feet
All other routes	750 feet	500 feet

SUBJECT 8
TEMPORARY CONNECTIONS (233.07)

Trans. 233.07 Temporary connections. *(1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:*

(a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans. 233.06 (2).

(b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans. 233.06 (2).

(2) *The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.*

(2m) *A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:*

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) *When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans. 233.06 (2).*

Temporary connections can be granted if there is a master plan that shows a different ultimate access pattern which isn't being built initially because the development is occurring in phases. Sometimes local fire and safety codes will require a temporary access point that can be removed when the ultimate development takes place.

Circumstances for closure or alteration of temporary connections is generally a negotiable item between WisDOT, the approving authority and the developer unless the connection becomes a safety problem. WisDOT should strive toward rectifying promptly any safety problems that may arise.

The planned removal of a temporary connection should be tied to either a specific date or an event, such as the beginning of phase 2 of a development.

Provisions should be made at the time of the initial development to pay for the removal of the temporary connection when alternate access is provided. A performance bond may be needed.

The district is responsible for monitoring and enforcing removal conditions of a temporary connection. There should be a penalty provided for and a responsible party identified if the agreed to conditions are not met.

SUBJECT 9
SETBACK REQUIREMENTS AND RESTRICTIONS (233.08)

Setbacks are necessary to provide light and air and space between a development and the highway, but also to preserve the public investment in the highway. Highways are a resource for the State of Wisconsin. Before development in an area occurs, the highways are constructed to meet the needs of the area. Development is unpredictable. Many communities do not have master plans in place that adequately preserve corridors for probable future needed highway improvements and as a result, many times the department must look to a relocation of a highway in order to meet the expanding needs of a community. It is becoming more difficult to bypass a community due to concerns over the environment and agriculture of an area and also due to the lack of available area around expanding cities. In order to provide for a facility to serve the future communities, the setbacks need to be in place. Setbacks are not automatically present along all state highways. They are restrictions placed upon developing land and only as the development occurs through land divisions. This is a planning tool. Without it, the future could be bleak with communities having to live with a substandard highway facility because it would not make sense to relocate half of the business district of a community someplace else in order to provide for an expanded highway facility. All practical uses of the area within the setback are not being denied, just those that may preclude a future highway facility. If the cost to buy additional right of way is too great, either a needed project will not be built or the state trunk highway will be relocated. In either case property owners adjacent to the highway, particularly businesses, will be adversely impacted.

Variances to the setback restrictions may be granted if the request is not counter to the public interest. Local setbacks and master plans may be good reasons for variances to reduce the setback distance. See "Variances" for additional information.

The Highway Setback referred to in Trans. 233 applies only to State Trunk Highways and Connecting Highways. County Highways, Town roads, and local streets are not subject to the "Highway Setback". However, local ordinances may have a setback that would govern on the non-STH highways, roads and streets. These local setbacks are not part of the 233 review. The County zoning office, and the local unit of government should be contacted for information regarding other setbacks.

The setback line is established when the land division is created. The location of the setback line does not move when we buy R/W from within the setback area, the setback area just becomes smaller. In other words, if there is a 50 foot setback and we buy 20 feet of new R/W from the property, there would then be a 30 foot setback, because the setback line itself does not move. So, our R/W plats must show the remaining setback widths on land divisions.

Setback line will not follow the vision corner line, but rather will follow the normal R/W line extended.

In areas where there is a parallel driveway or access easement within the normal setback area, the setback area will be expanded by the width of the driveway or easement. This expanded setback will be a condition of approval of the variance to allow a driveway in the setback area.

On routes with planned improvements that require additional right of way but the real estate has not yet been purchased, the setback would apply to the right of way as it exists at the time of the recording of the land division. In such a case, the department may want to do an advanced acquisition to establish the new right of way line prior to the creation of the land division. If the property owner is agreeable, the setback line can be set at the appropriate distance from the proposed right of way line, but the department cannot force the land owner to accept a larger setback area than what is required based on the existing right of way.

IMPROVEMENTS AND STRUCTURES

Structures and improvements that existed prior to the start of the land division process do not require a variance nor will compensation be denied if they must later be removed from the setback for a highway improvement project. However, they must be shown on the plat to prove that they existed at the time of the land division. No additional structures or expansions to existing structures may be built in the highway setback area.

If a disaster should befall a structure that was existing in the highway setback area prior to a land division ("grandfathered in"), as far as the DOT is concerned, the structure could be rebuilt upon the original footprint, with no expansion. However, there may be local ordinances that prohibit the rebuilding.

The purpose of this policy is to identify as many as practical of the specific types of improvements and structures which are or are not acceptable for placement between the right-of-way line and the setback line as required by Section 233.08 of Chapter TRANS 233, "Division Of Land Abutting A State Trunk Highway Or Connecting Highway" of the Wisconsin Administrative Code.

These lists are not all inclusive. A determination for features not listed shall be jointly made by staff from the Systems Planning and Operations Section of the appropriate district and the Access Management Coordinator in the Bureau of Highway Development (BHD). The BHD Access Management Coordinator will be responsible for maintaining a list of previously undetermined features that have been ruled on and for using that list to periodically update this policy.

- **Improvements**

  This term is defined in 233.015 under "Definitions".

  (2) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and open fences.

Prohibited Improvements in the setback. These features are typically relatively expensive to install and are not portable so they are usually expensive and time consuming to relocate. Any feature that is vital to the continued use of the rest of the property is prohibited from placement in the setback area.

As defined in 233.015

Parking lots
Driveways other than those that are perpendicular to the highway.
Loading docks
In-ground swimming pools
Wells
Septic systems
Retaining walls
Signs
Buildings
Building appendages such as porches
Drainage facilities

As interpreted by WisDOT:

Acceptable Features in the setback. Generally, these features will be relatively inexpensive to install and are portable or relatively easy and inexpensive to relocate even if not totally portable. The remainder of the property must not be dependent on these features to be used to its fullest potential.

As defined in 233.015:

Sidewalks
Terraces
Patios
Landscaping
Open fences

As interpreted by WisDOT:

Gardens and flower beds
Playground equipment
Residential satellite television dishes
Noise berms
Above ground swimming pools
Trailer mounted signs
Portable swing sets
Movable lawn sheds without pads or footings
Above ground swimming pools without decks

- **Structures**

This term is defined in 233.015 under "Definitions".

*(7) "**Structure**" includes a temporary or non–permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. "Structure" does not include portable swing sets, movable lawn sheds without pads or footings, and above ground swimming pools without decks.*

All structures are prohibited in the setback. This includes:
As interpreted by WisDOT:

garages
non-portable sheds
Subdivision entry way walls and gatehouses
Building appendages would include decks and loading docks

Features that are NOT considered structures include:
As defined in 233.015:

Portable swing sets
Movable lawn sheds without pads or footings
Above ground swimming pools without decks

As interpreted by WisDOT:

Noise walls
Trailer mounted signs
Gazebos

- **Utility Facilities In Setback**

Prior Notice Timeframes.

The time frames for the utilities notifying us and for us to reply to the utilities are the same. This means that if they give us the minimum notification (5, 30 or 60 days prior to construction) we would have to reply by the day that construction starts. In reality, if we have a problem with their proposed plans and we wait until the last day to reply, it is too late, they may be unable or unwilling to change their plans. We must reply earlier than the time allowed if we are to get their cooperation in changing the location of their proposed facility. It is in our best interest to reply as soon as possible.

"Utilities" Includes Cable TV

There is a little confusion on the part of some people regarding cable TV. Cable TV is not a regulated utility, but it is covered by TRANS 233, and they must abide by the setback restrictions.

> *233.015(6) states "**Public Utility** means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television services or water, or a rural electric cooperative, as described in s. 32.02(10), Stats."*

> *233.015(9) states "**Utility facility** means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01(1m)."*

Cable TV is not regulated by ch. 195 or 196, but it is defined by 196 and both of the definitions above list cable television service.

Unrecorded Easements

Some utilities have unrecorded easements, or verbal agreements with property owners allowing them to place utility facilities on private property. This was especially common prior to 1960. Sometimes property owners didn't want to sign any legal documents but gave their permission to place utility facilities on their property, generally in exchange for service. If the utility can prove that they have some sort of permission to be there, or if they can prove they have developed a prescriptive right prior to February 1, 1999, or if they can prove their facilities were there prior to the land division being recorded, WisDOT will consider their facilities to be compensable.

Potential Conflicts

In order to request that a utility change their proposed plan to locate in the setback, WisDOT must have a Major project in the program or a project in the 6-year improvement plan, or a project that was in the plan but has been delayed for some reason. Once a project is in the 6-year plan it is considered to still be a part of the improvement plan even though it was delayed for a few years.

If there is a plan in development, the proposed utility plan should be compared to the highway plan to determine if conflicts exist. If a highway plan is not sufficiently developed to determine potential conflicts, a "best-guess" should be made and that decision shall stand in the event that there is a change later. For example, if it appears that there will not be a conflict and the utility plans are OK'd by WisDOT, but there later turns out to be a conflict, the utility facility involved will be considered compensable.

If there are no highway projects scheduled in the area under consideration, a letter stating such should be sent to the utility. Any utility facilities placed in accordance with the proposed utility plan under consideration will be compensable in the future.

Any utility facility may be placed in the setback. Only the future compensation is affected by the presence of, or lack of, notice to WisDOT. If the utility refuses to adjust their proposed location to accommodate a future highway project, the district must file a "Notice of Non-Compensability" in the county Register of Deeds office for the area under dispute.

Service facilities for a single lot are generally not a concern and prior notice does not have to be given. Also, low cost utility facilities, such as small distribution lines, are not a concern. Large, expensive, or difficult to relocate facilities should be placed outside of any proposed highway grading areas. Also consider potential conflicts with overhead structures such as lighting, signals, bridges, sound barriers and retaining walls. Any proposed WisDOT landscaping plans should also be reviewed for potential conflicts.

Any easements in existence prior to February 1, 1999 have been exempted by the rule, even if no facilities existed in the easement on February 1, 1999. Any facilities placed in easements that were recorded prior to February 1, 1999 do not have to comply with the prior notice requirement. However, it is in the utility's best interest to give prior notice.

All applicable local and county ordinances that are more restrictive than TRANS 233 must be adhered to.

Review of proposed utility facilities will be done by district staff. No Central Office involvement or concurrence is necessary.

TRANS. 233 creates a setback area in every land division (CSM, subdivision, county plat, condominium plat, or any other land division). The setback is 50 from the R/W line, or 110 feet from the centerline of the R/W, whichever is the most restrictive. Utilities may occupy the setback, but they are only compensable under the following scenarios:

1. Utility facility is erected or installed before the land division map is recorded.
2. Utility facility is erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.
3. Utility facility is erected or installed after the land division map is recorded, but with prior notice in writing to the DOT.
4. Utility facility is erected or installed before the land division map is created, but modified after that date in a manner that increases the cost to remove or relocate the facility. In this case, the DOT pays the cost for the original facility only, unless the modification was made with prior notice in writing to DOT.

Compensation is further restricted by the following:

1. On connecting highways, the utility facility is only compensable if it is compensable under the applicable local setbacks.
2. The DOT will review the notice of a proposed utility facility and determine whether it conflicts with a planned highway project within the 6-year improvement program or a major highway project. If the DOT determines that a conflict exists, the DOT will notify the utility in writing and request the utility to consider alternative locations that will not conflict with the planned highway work. If the DOT and utility are not able to avoid or mitigate the conflict, the utility may proceed with the work but the DOT may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation the DOT is required to record a copy of its written notice of non-reimbursement with the county register of deeds.

Trans. 233 only applies to land divisions created after Feb 1, 1999. Any CSM, subdivision, or other land division will have to have a setback from a STH (or IH, or USH). If a utility wants to locate in that setback, we want the utilities to come to us with their plans. We should be looking at the plans with an eye toward future highway projects (6 year plan and majors). If their plans present a possible conflict with our plans, we ask them to change their plan. If we can't agree on a location that would not interfere with our future plans, then we would issue a notice of non-reimbursement.

When the utilities bring in a plan, we will have to check to see if it crosses any land divisions created after Feb. 1, 1999. If it does, we will have to look at the plan in the land division area. Does that conflict with our future plans? If not, we approve, sending a letter stating so. If it does conflict with our plan, we should work with them to find a location that doesn't conflict. If we can't find a mutually agreeable location, we issue the notice of non-reimbursement.

Each district will have to keep track of land divisions created after February 1, 1999. District 6 has developed a database and a SDS GIS application that they have offered to share with all districts. It is a good method of keeping track of this information. Copies of the database were distributed to the land division reviewers in each district. Contact your district's land division reviewer for more information (see list below), or contact Ray Drake (715-836-7279) of District. 6 if you have questions or would like more information on the system they use.

We should also keep track of reviewed utility plans. Each district will have to develop a way of tracking these reviewed plans. A spreadsheet or database with geographic information (such as quarter/quarter/section/town/range) should be included in the data so that it can be tied to a GIS system in the future. If you want to keep copies of the plans you approve, you must consider the storage space requirements and the retention period.

I don't know how many utility plans we can anticipate. Initially, probably not many, since it only applies to land divisions created after Feb. 1. However, since many land divisions are in growing areas, we could see some utility expansions into these areas in the near future. When someone creates a spreadsheet or database for tracking the utility plans, please let me know and I will share it with the other districts so that we avoid duplication of efforts. We can also discuss at our annual meeting in September.

The utility plan review process will have to be a joint effort of Planning and the utility coordinator. The utilities will probably bring things to the utility coordinator. The coordinator is the person most familiar with utility plans, jargon, etc., so the coordinator should work with Planning on this. Each district will have to develop a procedure for reviewing proposed utility installation plans.

There are timeframes established in the law. Utilities have to give us the following minimum notification:

Normal utility work	30 days prior to starting work	
Routine work	5 days prior	single residential distribution facilities and similar inexpensive work. Would include all annual service connection permit-type of work
Major utility work	60 days prior	includes transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines and facilities of similar magnitude

Obviously we have to reply prior to construction, and the sooner the better if we have problems with their plans.

We don't anticipate many notices of non-reimbursement. We hope that we can work with the utilities to find locations that don't pose a future conflict. If you do run into a situation where you need a notice of non-reimbursement, let me know. I am responsible for working with the

Office of General Counsel to develop a form to use for that. However, I am not actively pursuing that at this time. (There are other legal issues that are more important, such as Cooperative Acquisition.) When we need the form, let me know and I will work on that if I have not already done so. Remember, for something to be non-compensable, we have to file a notice of non-reimbursement. If the notice is not filed, the facility will be compensable.

PROCEDURE FOR UTILITY NOTIFICATION AND DOT REVIEW & COMMENT

{to be written}

SETBACKS IN PLACE PRIOR TO FEBRUARY 1, 1999

The following note was placed on plats beginning about a year before the revised TRANS 233 took effect. The note may sometimes have been labeled "highway setback" and sometimes "building setback". A similar note is placed on the current land divisions.

> *"No improvements or structures are allowed between the right-of-way and the setback line. Improvements include but are not limited to signs, parking lots, parallel driveways, wells, septic systems, drainage facilities, etc., it being expressly intended that this restriction shall constitute a restriction for the benefit of the public according to section 236.293, Wisconsin Statutes and shall be enforceable by the Department of Transportation. Contact the Wisconsin Department of Transportation District office for more information. The phone number may be obtained by contacting your County Highway Department."*

It is our intention to not compensate an owner for improvements that are made whenever this note was used, regardless of whether it was placed on a plat processed under the old rule or on a land division map processed under the new rule. An exception to that would be when a variance was granted to allow something to be constructed within the setback. Under the new rule we plan to require the owner to sign a waiver of damages as a condition of approval of the variance, so that compensation will no longer be a contested issue.

In summary, if a plat that is approved and recorded prior to February 1, 1999 contains this note and did not have a setback variance, any improvement constructed after the dare the plat was recorded is not compensable. If it contains the note but there was a variance to the setback, it is compensable. Any improvement that existed at the time the plat was created should have been shown on the plat, and would be compensable. If a plat approved before February 1, 1999 does not contain this note, any improvements within the setback are compensable.

OUTDOOR ADVERTISING SIGNS IN THE SETBACK

Scenario: A sign is permitted within 50 feet of the highway right of way, or 110 feet from the centerline of the highway, whichever is more restrictive (farther from the centerline). After February 1, 1999 the land owner divides the property, either via a subdivision, CSM, deed, or any other means. This land division subjects the property to TRANS 233 highway setback

restrictions. No signs are allowed in the setback area, but since the sign is existing at the time of the land division, it is grand-fathered in and allowed to remain.

At some point in time after the land division is recorded, the sign owner wants to change the sign to something more expensive. This change, whatever it might be, requires a new sign permit. When DOT receives the new sign permit application they notify the applicant that the change will require them to sign a "Notice of Non-compensation" if they want to pursue the change. The notice states that if future relocation is necessary because of a highway improvement project, DOT will pay only for the type of sign that was in place when the land division was created. Any improvements after that point in time will not be paid for.

The sign owner has the option of moving the sign out of the highway setback area, or proceeding at the old location with the knowledge that future compensation will only apply to the original structure.

A sign owner may complain that the department has diminished the value of his easement or agreement with the property owner. Actually, the property owner diminished that value when they divided the property. It was their action that caused the property to fall under the TRANS 233 highway setback restrictions.

SECTION 10
NOISE, VISION CORNERS, AND DRAINAGE

NOISE (233.105)

(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans. 405, the land divider shall be responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. In addition, the owner shall include the following notation on the land division map:
"The lots of this land division may experience noise at levels exceeding the levels in s. Trans. 405.04, Table I. These levels are based on federal standards. Owners of these lots are responsible for abating noise sufficient to protect these lots."

The purpose of this section is to inform land owners and prospective buyers of land adjacent to an exiting state highway facility that noise levels on some or all of the divided lands may exceed federal standards and to inform them that the Department will not be responsible for mitigating the noise. It places the burden of the mitigation upon the owner. This note is only required on land divisions where we know of a problem or where it is likely there will be a problem in the future. The rule does not say that noise barriers must be built. Whether or not they are provided will depend upon whether the land divider, prospective buyers or people who have already bought lots feel they are necessary and also upon whether any of those people are willing to pay for them. The intent of this section is to inform all concerned that WisDOT will not construct or finance them for land divisions next to existing highways. The developer is accepting the risk on his own behalf or on behalf of subsequent buyers if he chooses to develop close to an existing state trunk highway which may now or in the future adversely affect owners of the created land divisions . If noise levels increase due to adding lanes to the highway, WisDOT will perform a noise analysis and if there is substantial noise impact, will install noise barriers if it is practical to do so. Generally, it is only practical on highways that are freeways.

Note: Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that they are responsible for further noise abatement.

FDM Procedure 23-5-1 Figure 1 provides the Federal Noise Abatement Criteria. Procedure 23-50-1 mentions the DOT responsibility in reviewing abutting plats and states that we should consider the noise impacts in our review.

The land divider's responsibility for noise abatement expires when the lots are sold. If and when an owner feels noise abatement is necessary, it shall be their responsibility to provide it.

For noise purposes, an existing highway would be the roadway in place at the time the land division is created or the roadway resulting from the future rehabilitation or reconstruction if done substantially along the same alignment and containing an equal number of travel lanes. If the highway is subsequently revised so that it is moved significantly closer to the land division or

the number of travel lanes is increased, there could be a noise impact to adjacent properties due to the change. In that case WisDOT would no longer consider it to be the "existing" highway for purposes of 233.105(1). In those situations WisDOT will evaluate the changed noise levels on those properties and, if practical and effective, mitigate the affects of the increased noise levels significantly affecting the properties. Mitigation may consist of measures other than constructing noise barriers. Noise barriers are not effective where there are many openings such as driveways, thus they are typically only installed along freeways.

The land divider is not necessarily responsible for noise abatement. That is because 233.105(1) does not mandate that noise barriers be built. It merely says that the land divider is responsible for "any" noise barriers. He may decide while he is the owner that there will not be any. Once he sells the lot the new owner becomes responsible.

The note that is placed on the land division at its creation is in effect for perpetuity. Subsequent buyers are responsible for noise abatement.

All land divisions on four lane highways, high volume two lane highways, and highways with a high percentage of truck traffic should have the noise note added. Other things to consider include whether there is a quarry or trucking firm nearby, and whether there is a steep grade that may require trucks to do a lot of braking.

VISION CORNERS (233.105)

> *(2) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:* ***"No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height."***
>
> *Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01(13)(e), Stats.*

See FDM procedure 11-10-5 Page 2 to 3 and Figure 11. Guidance for vision corners on low speed side roads (below 40 MPH) is found in the AASHTO Geometric Design of Highways and Streets, Chapter 9, At-Grade Intersections.

Vision corners are generally required at locations where local roads or driveways intersect with the state highway. Vision corners are required as a safety necessity. They are necessary to provide an unobstructed sightline of oncoming vehicles for both the internal traffic exiting the land division and for vehicles on the mainline. They are required if the land divider wants to provide a highway connection to the state highway. They do not need to do this if they do not connect to the state highway. If there is alternative access the department strongly encourages its use instead of directly accessing the highway. If the highway speeds are low and visibility is adequate without the need for the dedication it will not be required. The land divider is the initiator of the action (dividing the property) and is receiving something of value (a connection to

the state trunk highway) in return for the dedication. The land divider can avoid this by connecting to a road other than the state trunk highway or by not dividing the property.

No compensation is required for the dedication of vision corners. The land divider is dedicating the land in exchange for allowing a new or upgraded public road or street access to the state trunk highway. The department prefers dedication instead of an easement for vision corners because it clarifies the rights of the department to restrict and maintain vegetation in this area. Easements can be used, along with the note mentioned above if the dedication of the property presents a problem for complying with local ordinances.

Vision corners should be required at locations with high truck volumes, high total volumes, or any time that the geometrics of the intersection are less than desirable. The safety of the traveling public should be a major consideration.

DRAINAGE (233.105)

> *(3) DRAINAGE. The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that ensures that the anticipated discharge of storm-water upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, down-stream properties or transportation facilities.*

The land divider is responsible for providing the drainage computations and information.

If the owner is merely dividing the land now, with no specific development plans, they must have some idea of what may be planned based upon zoning alone. We are requesting land dividers contact the district before they expend resources on drainage plans. The district can work with the developer to determine the extent of drainage information needed to meet this requirement.

Post-development peak runoff rates must not exceed the pre-development peak runoff rates for the 2-year through 50-year design storms, unless the downstream system is designed for a larger event. Emergency overflows must be provided to handle the 100-year discharge.

Storm drainage outfall lines will be allowed to cross the setback area. The type of drainage facilities that cannot be replaced elsewhere are the kind of facilities that need to be kept out of the setback area, such as storm water detention basins.

WisDOT will determine whether a commonly employed method was used and will review the assumptions to ensure they are reasonable and the computations to ensure they are correct.

This provision in the rule is to inform the land divider of their responsibilities regarding storm drainage. Computing storm water runoff rates is not an exact science. Various methods may be used for estimating runoff.

Downstream properties may be any publicly or privately owned lands through which the runoff flows. The computations need to show that the post-development flow is not greater than the pre-development flows. The computations do not need to show the effect on downstream properties.

SUBJECT 11
VARIANCES (233.11)

Trans. 233.11 Variances. *(1) No municipality or county may issue a variance from this chapter without the prior written consent of the department.*
(2) The department may not authorize variances from this chapter except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A ***variance may not be contrary to the public interest and shall be in harmony with the general purposes and intent*** *of ch. 236, Stats., and of this chapter. The department may not grant a variance authorizing the erection or installation of any structure or improvement within a setback area unless the owner executes an agreement providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the variance. The department may require such conditions and safe-guards as will, in its judgment, secure substantially the purposes of this chapter.*

Where the Department finds that unnecessary hardships or practical difficulties may result from the strict compliance with these requirements, it may approve variances to land division requirements, provided that the variance shall not have the effect of nullifying the intent and purpose of these requirements. The Department shall not approve variances unless the evidence presented to it in each specific case supports the following:

- The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property;
- The conditions upon which the request is based are unique to the property for which the relief is sought and are not applicable generally to other property;
- Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
- The relief sought will not in any manner vary the provisions of the local zoning ordinance, master plan, or official map, except that those documents may be amended in a manner prescribed by law.

In approving variances, the Department may require such conditions as will, in its judgment, secure substantially the purposes described in Chapter 236, State Statutes.

BLANKET VARIANCES

In areas with existing development and where local ordinances have less restrictive requirements, such as a reduced setbacks, the local unit of government may apply for a blanket variance. This variance would apply to an entire area. Once granted, all development in that area would be governed by the specifics of the variance. For example, the entire Central Business District could have reduced setbacks and access could be granted according to local zoning requirements. However, the local access requirements must be restrictive and not general.

The local unit of government must submit a request for a blanket variance to the appropriate WisDOT District Office. The request should include:

1. A copy of the zoning regulations for the area.
2. A letter indicating a need for the blanket variance, the type of variance needed and the reasons the municipality is requesting such a variance.
3. An aerial photo of the area under consideration for the variance. If such a photo is not available, a map showing existing structures and improvements would suffice.

A blanket variance does not negate the need for DOT review of land divisions in the affected area, it will just make the review simpler and quicker.

APPLICANT REQUIREMENTS FOR SUBMITTING A VARIANCE

The applicant shall request in writing a variance for the use they are proposing. A "Request For Variance" form may be sent to the applicant if their original request does not contain all of the needed information.

A petition for a variance shall be submitted in writing by the land divider at the time when the land division is submitted for review by the Department. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

SUBMITTING A REQUEST FOR A VARIANCE TO CENTRAL OFFICE

1. Date of Submittal and DOT Review Expiration Date
2. Copy of Request from divider - this should include the reasons the request is being made. "Hardship" is not an adequate reason, without supportive evidence.
3. Copy of land division and list of district comments, not just relating to variance but all comments.
4. District Recommendation. This should include entire thought process gone through by the district, including alternatives considered and determined not to be feasible. If trade-offs are being made (such as moving an existing driveway or street), that information should be included. Physical information regarding the property should be included. A copy of a topographic map should be considered. All the required information under 233.04 should be submitted. The submitter should be informed in advance that because a variance is being requested, the time limit may need to be extended. Do not make promises for timely review if a variance request is being sought.
5. Include any description of proposed plans to improve that section of highway or when the next improvement may be warranted. Describe the highway (2-lane rural, 4-lane urban, 4-lane expressway/freeway, etc.), including ADT's.
6. Include a copy of a plat book sheet showing the property.
7. Indicate that sight distance has been examined and determined to be adequate and separation between adjacent driveways or streets meets standards. If the driveway is existing, does it have an accident history?
8. If a setback variance is being sought, what is the setback of the surrounding properties? An aerial photo or map showing all the surrounding properties and

setbacks noted should be included. If certain things are to be allowed in the setback, make sure the "setback" note is modified.

9. Copy of completed submittal form.
10. Incomplete submittals will be returned.
11. If the request is for an access, indicate the following:
    a. Whether it is existing or proposed.
    b. If existing-
        -Is is being relocated or staying in place?
        -Will the type of usage (i.e. residential) stay the same?
        -How many other accesses currently exist on the parcel being divided and where are they located?
    c. What is the distance between this access and the nearest private access on this property or nearest public road?
    d. Is there one or more existing access points from the 40 acre original land survey parcel from which this is being divided?
12. Do Sec. 84.09 or 84.25 controls exist?

PROCEDURE FOR PROCESSING VARIANCES

{more to be written}

Cost is not a hardship. It can be a factor, but by itself the additional cost of conforming to a Trans. 233 requirement is not a sufficient reason to grant a variance.

Waiver of future compensation

One purpose of this provision is to assure that there will be an area available to expand the highway when development requires a needed improvement. WisDOT pays fair market value for the land it acquires. Those portions of the land on a lot containing no improvements would be valued at the same rate as those portions containing improvements. It is detrimental to the owner, to WisDOT, to the community and society in general to remove development to make way for a highway project when it can be avoided by preserving space for such projects.

Access Note for Approved Variance

The following wording should be added to the standard access clause when a variance for access is approved as part of the Trans.233 review.

"Access as shown shall be permitted by the department through the driveway permitting process. Permits are revocable."

DELEGATION OF VARIANCE APPROVAL TO THE DISTRICTS

In the future, the authority to approve some variance requests may be delegated to the districts. Initially, these will generally be variances for existing driveways and for locations where access covenants or other access restrictions are in place and access is allowed at the proposed location.

A periodic process review will be conducted to assure that variances are handled consistently throughout the eight districts.

When variances are approved by the districts, a copy of the "Record of Decision" page must be sent to the Central Office.

SUBJECT 12
PERFORMANCE BOND (233.12)

Trans. 233.12 ***Performance bond****. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.*

A performance bond is needed when there must be a guarantee that certain work will be done at some point in the future, such as the removal of a temporary access point.

PROCEDURE FOR HANDLING PERFORMANCE BONDS

{to be written}

SUBJECT 13
FEES (233.13)

Trans. 233.13 Fees. *The department shall charge a fee of $110 for reviewing a land division map that is submitted under s. 236.10, 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, on or after the first day of the first month beginning after February 1, 1999. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI–U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of $5.*

A revenue **project ID** has been established for the Fees for Land Division Plats Abutting State Trunk Highways. It is **0106-33-99**. This number should be used in conjunction with all money accepted as part of the Trans. 233 review process.

Fees must be charged for each formal submittal to the DOT that requires a formal response. Conceptual reviews are not subject to the fee and will not require a formal response. Many municipalities require that the roads be constructed before they will approve the final plat. Therefore, WisDOT must review the plat twice, once during the preliminary plat stage and once during the final plat stage. The $110 fee will be assessed each time a preliminary and a final plat are submitted.

WisDOT does not require both a preliminary and a final review for every land division, but it does require review and approval prior to any construction of street infrastructure, which in effect requires a preliminary review when the municipality requires such construction prior to final plat approval

CHECK PROCESSING PROCEDURES

1. Accept only **Checks or Money Orders** *(no cash or credit)* made out to the Wisconsin Department of Transportation.
2. Fill out a Cash Sales Record Completely (See Sample)
   - Name and Address of Submitter
   - Enter District #, your initials and sale date
   - List item by land division name, Unit price ($110), Total Cost
   - Enter Project I.D.: **0106-33-66** and total (this number is a revenue project I.D. number)
   - Give pink copy of receipt to submitter, keep Canary for your records, and forward white copy plus check to BAA.
3. At end of day fill out a Cash Sales Summary (only if any moneys were collected) (See Sample)
   - Enter beginning receipt number and ending receipt number
   - Enter project I.D. (0106-33-66) and total amount collected that day in **Section A.**
   - Enter total amount of checks/money orders in **Section B**, then fill in both total slots.
   - Fill in your name and address and sign and date Summary Sheet.
4. At end of day take receipts, checks and cash sales summary and forward them all to Louise Olbrantz at BAA, WIS DEPT OF TRANSPORTATION, 4802 SHEBOYGAN AVE RM 851, PO BOX 7366, MADISON WI 53707-7366. (Can be sent by Inter-D or US mail.)

Each Receipt book has 25 receipts. If you are nearing the end of your book, additional Receipts and Cash Sales Summaries may be obtained from Louise Olbrantz @ 608 266-0329 or contact the Access Management Coordinator at central office at 608-266-2372.